

LAND USE COMMISSION
MEETING MINUTES
September 13, 2018 – 9:00 a.m.
State of Hawai`i,
Maui Arts & Cultural Center, Haynes Meeting Room
One Cameron Way, Kahului, Maui, Hawai`i, 96732-1137

COMMISSIONERS PRESENT: Jonathan Scheuer
Arnold Wong
Nancy Cabral
Gary Okuda
Dawn Chang
Edmund Aczon
Lee Ohigashi

COMMISSIONERS EXCUSED: Aaron Mahi
(There are currently 8 seated
Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Randall Nishiyama, Deputy Attorney
General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:00 a.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the September 6, 2018 meeting minutes. There were none. Commissioner Ohigashi moved to approve the minutes and Commissioner Aczon seconded the motion.

The minutes were approved by voice vote (6 ayes-0 nays- 1 abstain (Cabral)- 1 excused (Mahi)).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.

SEP 27- (Hawai`i) at NELHA

- SP90-374 PR Mauna Kea (Hawai`i)- Motion to Extend Time

October 24-25 (Hawai`i) at Kailua-Kona

- A06-767 Waikoloa Mauka LLC (Hawai`i) - Continued Proceedings

November 14, 2018- at Honolulu International Airport Conference Room

- A06-763 Kapolei Development –(O`ahu) – Extend Time
- November 15, 2018- (Maui) at Maui Arts and Culture Center (MACC)

- A07-773 Emmanuel Lutheran- (Maui) – Motion to Extend, Approve 201h, Motion to Bifurcate

November 28, 2018 (Hawai`i) at NELHA

- Status Reports- A10-788 HHFDC and A00-730 Lanihau
- OSC A06-770 Shopoff Group
- A18-805 Church – Motion to Accept FONSI

November 29, 2018 – Maui at MACC

- Continued/unfinished Maui business

December 12, 2018- (Maui) at MACC

- A94-706 Ka`ono`ulu Ranch status report

Any questions or conflicts, please contact LUC staff.

Chair Scheuer stated that the next agenda item was an evidentiary hearing and action meeting on Docket No. A05-755 Hale Mua Properties, LLC to consider an Order to Show Cause as to why approximately 240.087 acres of land at Waiehu, County of Maui, Hawaii, should not revert to its former land use designation or be changed to a more appropriate classification.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

Hear evidence, deliberate and take action on order to show cause issued June 4, 2018

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APPEARANCES

Randall Sakumoto, Esq., represented new owner Southwest 7 successor to Petitioner Hale Mua Properties (SW7)

Murray Smith, SW7

Michele McClean, Director, County of Maui Planning Department (County)

David Galazin Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Lorene Maki, Planner, OP

Sterling Kim, Hale Mua Properties, LLC (HM)- (Admitted as a Party after deliberations by Commission)

Sterling Kim provided written testimony and requested to be heard by the Commission.

Chair Scheuer acknowledged and heard Mr. Kim's request to be a Party to the proceedings. Chair Scheuer had Mr. Kim state the basis on which he claimed to be a Party.

DISCLOSURES

Commissioner Okuda disclosed that he had seen Mr. Kim attending the event functions that he had, but felt that he could remain fair and impartial during the proceedings and deliberations. Chair Scheuer asked if the Parties had any objection to Commissioner Okuda's continued participation. There were no comments or objections.

DISCUSSION ON PARTICIPATION OF MR. KIM

Mr. Kim was sworn in and described his past association with the Petition Area and how he had attempted to develop it; and why he should be included in the proceedings. Chair Scheuer asked the Parties what their positions were in allowing Mr. Kim to be a Party to the proceedings and if they had any questions for Mr. Kim.

Mr. Sakumoto summarized his interactions with Mr. Kim and HM during discussions regarding the Petition Area and described the various actions that had been taken to address issues that had been brought to his attention by Mr. Kim. Mr. Sakumoto stated that he had no objections to HM being allowed to be a Party.

County stated that it had no objections to HM being a Party.

OP stated that it deferred to Petitioner and had no objection to HM being allowed as a Party.

Commissioner Wong requested and was granted a recess to allow for a review of Mr. Kim's written submittal.

Chair Scheuer declared a recess at 09:14 a.m. and reconvened the meeting at 09:18 a.m.

Chair Scheuer asked if OP had any comments. Ms. Apuna reconfirmed that OP had no objection to Mr. Kim's participation.

Commissioner Wong requested to see the balance of Mr. Kim's presentation. Mr. Kim summarized his presentation.

Commissioner Ohigashi requested clarification on the "build out" of the proposed development of the Petition Area. Mr. Sakumoto stated that SW7 had only financial interests involved with the Petition Area and deferred to Mr. Kim, who had knowledge of the proposed project development efforts. Commissioner Ohigashi replied that he would defer his questions till later.

Commissioner Chang requested clarification on how the role of "kuleana lands" factored into the overall Petition Area. Mr. Sakumoto described how the complicated financing of the Petition Area had failed to include the "kuleana lands" in the loan documents, and summarized the efforts of SW7 in acquiring them from or resolving ownership issues with HM.

Mr. Kim stated that he was unaware of how the "kuleana lands" were overlooked during foreclosure action and shared how he had attempted to resolve land title issues involved with the Petition Area.

Commissioner Okuda requested clarification on what Mr. Kim recalled about the SW7 foreclosure action. Mr. Kim provided his recollection of events and stated that he did not appeal the foreclosure action.

Chair Scheuer recounted the information collected by Commissioner questioning and asked if there were any further questions.

Commissioner Cabral requested additional clarification on action that Mr. Kim took to address land title irregularities. Mr. Kim described how he had worked with his title company and the State of Hawai'i to clear the title issues of the Petition Area; and how he learned about the "kuleana lands" problem when he researched how to regain ownership.

Commissioner Wong inquired if a motion was required to accept Mr. Kim (HM) as a party. Deputy Attorney General Nishiyama stated that a motion was required. Commissioner Wong moved and Commissioner Aczon seconded the motion to admit Mr. Kim as a Party.

Commissioner Okuda requested clarification on what the vote was for. Commissioner Wong responded that it was to admit Mr. Kim as a Party.

Mr. Sakumoto asked if the motion also included HM, as well. Chair Scheuer acknowledged that Mr. Kim and HM were both included.

The motion was approved by voice vote (6 ayes- 1 nay (Cabral)- 1 excused (Mahi)).

Chair Scheuer stated that Mr. Kim (HM) were now included in the proceedings and updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Commissioner Chang asked if Mr. Kim was aware of the documents involved in the hearing. Mr. Kim responded that he had read material on the website but had not read the stipulation by the Parties prepared before he was admitted as a Party.

Chair Scheuer called for Public Witnesses

PUBLIC WITNESSES:

1. Jocelyn Costa

Ms. Costa shared her past experiences on the Petition Area and described why “*kuleana lands*” were important to her.

Commissioner Chang requested clarification on whether Ms. Costa had knowledge of who the owners involved in any “quiet title” action were and what the current state of the property was. Ms. Costa replied that she didn’t know who the owners might be, and described the current state of the Petition Area.

Chair Scheuer commented that he knew Ms. Costa and that the issue of title to the Petition Area was not the focus of the LUC hearing.

2. Henry Joseph Kaho`olehua

Mr. Kaho`olehua stated that he was heir to the title holder of the land and claimed to have an interest in the area. There were no questions for Mr. Kaho`olehua

Chair Scheuer declared a recess at 09:51 a.m. and reconvened the meeting at 10:00 a.m.

Chair Scheuer called for the Parties to make their presentations.

Petitioner SW7

Mr. Sakumoto stated that he had already provided most of the background information and history on why Successor Petitioner Southwest 7, LLC had decided to stipulate with OP and County in his initial opening statements; and described why Petitioner had not complied with certain conditions of the Findings of Fact, Conclusions of Law and Decision and Order dated February 12, 2007 and as amended.

Commissioner Ohigashi requested clarification on whether substantial compliance had occurred. Mr. Sakumoto described how he had not discovered any compliance by Petitioner after reviewing records and checking with OP and County on this matter.

Commissioners Chang, Okuda, and Chair Scheuer requested clarification on Mr. Kim's status with SW7. Mr. Sakumoto replied that he was unsure of how aware Mr. Kim was of the current stipulation between SW7, OP and County and that SW7 did not have an agreement to sell back property to Mr. Kim, and would have to decide on future matters regarding default judgements and foreclosure actions as they occurred.

There were no further questions for Mr. Sakumoto.

Petitioner Mr. Kim

Mr. Kim provided background history and described the project that he envisioned to build in the Petition Area.

Chair Scheuer stated that the focus of the meeting was to address an Order to Show Cause and asked if the Parties were agreeable to a presentation that was not supported by documents filed with the Commission. There were no objections to Mr. Kim's use of a PowerPoint presentation.

Commissioner Wong inquired about how much time would be allowed for presentations by the Parties. Chair Scheuer obtained the time estimates from the respective Parties.

Mr. Kim stated that his non-compliance was due to the economic recession occurring while he attempted to launch his proposed project and described how he couldn't handle the debt load and succumbed to foreclosure. Mr. Kim added that he had been unaware of the 2018 LUC OSC action until reading about it in the paper.

Commissioner Ohigashi questioned whether any of the presentation materials used by Mr. Kim were part of the record. Mr. Kim responded that he had only provided what materials he had, and described his plans for his original project and what types of features it included.

Chair Scheuer asked if there were any further questions for Mr. Kim.

Petitioner Kim Questions- County

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Mr. Galazin inquired whether a timeline for commencement or fulfillment of conditions was in place. Mr. Kim shared his perception of how certain entitlements were active and how he might address them; and what actions he would take prior to commencement of his proposed development.

Petitioner Kim Questions- OP

None

Petitioner Kim Questions- Commissioners

Commissioners Cabral, Aczon, Ohigashi, and Chang requested clarification on what HM lands were included in the Petition Area and whether the acreage amounts were accurate; what Mr. Kim's plans for project funding and re-acquisition of the Petition Area were, what the source of project funding would be, what the status of County 201 G approvals were, what the reasons for lack of substantial compliance by HM were, if legal counsel would represent Mr. Kim's interests, and what support existed for the proposed project's future plans as described to the Commission. Mr. Kim described his past proposed project and how he was attempting to revitalize it with new funding. Mr. Kim also shared how the economic recession had negatively impacted his efforts to move forward with his planned development and why he was unable to comply with the conditions of the decision and order.

Mr. Nishiyama excused himself at 10:40 a.m. and rejoined the meeting at 10:48 a.m.

Commissioners Chang, Okuda and Chair Scheuer requested clarification on estimated development costs, possible loan agreement terms and conditions, and how Mr. Kim and HM were separated as an individual and entity. Mr. Kim provided his cost estimates and described how his funding depended on the outcome of the LUC decision in the Order to Show Cause hearing; and how he and the HM entity were related.

Chair Scheuer called for County to provide its position.

County

Mr. Galazin provided County's position on this matter and shared why County had agreed to Petitioner's stipulation. Mr. Galazin stated that he had only recently been made aware of HM's efforts to revive the project and described why County was not opposed to the project moving forward and deferred to Ms. Choteau-McLean to respond to questions regarding County's position on housing issues.

Ms. McLean provided her perspective of how the County might be supportive if housing projects could expeditiously move forward to meet housing needs in a timely manner.

Questions for County

Commissioners

Commissioners Ohigashi, Scheuer and Chang requested clarification on whether certain conditions had been perceived as fulfilled by County, what compliance and timing issues were

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involved; whether the 2005 EIS for the proposed project was still relevant, and if County agreed that conditions set in the Decision and Order (D&O) were unsatisfied.

Ms. McLean provided her understanding of the progress that had occurred since the D&O had been issued; how certain conditions depended on a sequence of items occurring in a certain order; why the EIS would still be considered relevant; and summarized that the conditions were still unsatisfied.

Chair Scheuer called on OP to provide its position.

OP

Ms. Apuna provided OP's position on this matter and provided OP's reasons for agreeing with Petitioner's stipulation. Ms. Apuna described how OP had gathered information from various agencies on how Petitioner and Successor Petitioner had not complied with conditions imposed or with representations and commitments made in the Findings of Fact, Conclusions of Law and Decision and Order dated February 12, 2007, as amended.

Questions for OP
Commissioners

Commissioners Aczon and Chang requested clarification on whether Mr. Kim's entry into proceedings affected OP's position on the stipulation and how lack of compliance with conditions affected OP's position.

Ms. Apuna described how Mr. Kim's late appearance and participation in proceedings made it difficult to alter the position OP had earlier and shared how a consummated sales transaction restoring him as the landowner would weigh in OP's decision on the matter, and how the lack of commencement and compliance with conditions over the last years factored into agreeing to the stipulation between Parties.

Chair Scheuer declared a recess at 10:57 a.m. and reconvened the meeting at 11:08 a.m.

Closing Statements
Petitioner SW7

Mr. Sakumoto summarized his arguments and stated that the stipulation was still in place with no change in position and no objection to reversion of land use designation; and thanked the Commission for its efforts.

Petitioner Kim

Chair Scheuer stated that he had overlooked asking if Mr. Kim, after being admitted as a Party, would abide by the Commission's policy on reimbursement of expenses. Mr. Kim requested clarification on what expenses he would be responsible for and LUC staff described the various items that a Petitioner was responsible for. Mr. Kim acknowledged that he would comply with the reimbursement policy.

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Mr. Kim recounted why the proposed project should be given an opportunity to succeed and described his plans to continue pursuing its revival.

There were no further questions.

Formal Deliberations and Decision Making

Chair Scheuer stated that the Commission would enter formal deliberations and had Mr. Orodener poll the Commission for readiness to deliberate.

The Commission unanimously (7-0-1 excused) signified that they were ready to deliberate.

Commissioner Ohigashi moved to revert the Petition Area to its original designation. Commissioner Chang seconded the motion.

Commissioner Chang moved for an Executive Session to confer with counsel regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Commissioner Wong seconded the motion.

The Commission entered Executive Session at 11:19 a.m. and exited at 11:21 a.m.

Chair Scheuer asked if there was discussion on Commissioner Ohigashi's motion.

Commissioner Cabral shared her concerns about alternatives to appeal an OSC order.

Commissioner Wong stated that he was in favor of the motion and described his assessment of how Petitioner had failed to demonstrate substantial commencement and why he felt reverting the property's land use designation was the appropriate action for the LUC to take.

Commissioner Aczon expressed his reservations about deciding against the motion without concrete evidence to support it.

Commissioner Okuda stated that he was in favor of the motion and shared how the LUC rules, property foreclosure action, and SW7's substantial ownership rights had affected his decision-making.

Commissioner Chang noted how the stipulation by the Parties had specifically addressed conditions that had not been met.

Commissioner Cabral stated that she supported the Motion.

Commissioner Ohigashi echoed Commissioner Okuda's reasons for supporting the motion and stated his respect for Mr. Kim's attempt to provide housing alternatives for Maui residents.

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Chair Scheuer stated that he was in favor of the Motion and echoed his fellow Commissioners.

Chair Scheuer had Mr. Orodener poll the Commission.

The Commission unanimously (7-0-1 excused) voted in favor of the motion to revert

There being no further business, Chair Scheuer adjourned the meeting at 11:32 a.m.